

2014 No. 1403

ENERGY

The Energy Efficiency (Encouragement, Assessment and Information) Regulations 2014

<i>Made</i>	- - - -	<i>2nd June 2014</i>
<i>Laid before Parliament</i>		<i>5th June 2014</i>
<i>Coming into force</i>	- -	<i>26th June 2014</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A(1) of Schedule 2 to, the European Communities Act 1972(a) (“the 1972 Act”).

The Secretary of State is a Minister designated(b) for the purpose of section 2(2) of the 1972 Act in relation to energy and energy sources. These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Secretary of State that it is expedient for any reference made by these Regulations to Annexes II, VIII, IX and X to Directive 2012/27/EU of the European Parliament and of the Council of 25th October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC(c) to be construed as a reference to these Annexes as amended from time to time.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Energy Efficiency (Encouragement, Assessment and Information) Regulations 2014 and come into force on 26th June 2014.

(2) Regulation 6 does not extend to Northern Ireland.

Interpretation

2. In these Regulations—

“competent authorities” means, in relation to—

- (a) England, the Secretary of State;
- (b) Wales, the Welsh Ministers;
- (c) Scotland, the Scottish Ministers; and

(a) 1972 c.68; section 2(2) of the 1972 Act was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7); paragraph 1A(1) of Schedule 2 to the 1972 Act was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and subsequently amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008. There have been other amendments which are not relevant to these Regulations.

(b) S.I. 2010/761.

(c) OJ No L 315, 14.11.2012, p1; the Directive has been amended but the amendments are not relevant to these Regulations.

(d) Northern Ireland, the Northern Ireland departments;

“energy efficiency” means the ratio of output of performance, service, goods or energy, to input of energy;

“energy efficiency improvement” means an increase in energy efficiency as a result of technological, behavioural or economic changes;

“energy efficiency measure” means a measure which is designed to result in an energy efficiency improvement;

“energy performance contract” means a contract under which energy efficiency measures are—

(a) provided;

(b) verified and monitored during the whole term of the contract; and

(c) paid for by reference to a contractually agreed level of energy efficiency improvement or other agreed criterion such as financial savings,

and “energy performance contracting” shall be construed accordingly;

“energy savings” means an amount of energy saved determined by measuring or estimating consumption before and after implementation of an energy efficiency measure, making appropriate adjustments to account for external conditions affecting energy consumption;

“energy service” means any benefit derived from a combination of energy with energy-efficient technology or action (including the operations, maintenance or control necessary to deliver that technology or action) which is delivered on the basis of a contract and which in normal circumstances is proven to result in energy efficiency improvements or energy savings which can be verified and measured or estimated;

“energy service provider” means a person who delivers energy services or energy efficiency measures in a final customer’s premises;

“final customer” means a person who purchases energy for their own use;

“the Directive” means Directive 2012/27/EU of the European Parliament and of the Council of 25th October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC, and any reference to Annexes II, VIII or IX to the Directive, or to any part of those Annexes, is to be construed as a reference to those Annexes, or to those parts, as amended from time to time.

Encouraging energy audits and energy management systems

3.—(1) In this regulation—

“energy audit” means a systematic procedure which—

(a) enables sufficient information to be obtained to allow the energy consumption profile of a building or group of buildings, an industrial or commercial operation or installation, or a private or public service to be accurately understood and described;

(b) identifies and quantifies cost effective energy savings opportunities in relation to such energy consumption profiles;

(c) satisfies the minimum requirements specified in Annex VI of the Directive; and

(d) results in the production of a written report of its findings;

“energy management system” means a documented procedure such as BS EN ISO 50001:2011(a) which provides for the systematic use of management and technology for the purpose of achieving an energy efficiency improvement;

“enterprise” means any entity engaged in an economic activity, irrespective of its legal form;

(a) ISBN 978 0 580 76206 2. Copies can be obtained from the British Standards Institution at www.bsigroup.com.

“small and medium-sized enterprise” means an enterprise which employs fewer than 250 persons and has an—

- (a) annual turnover not exceeding 50 million euros; or
- (b) annual balance sheet total not exceeding 43 million euros.

(2) The competent authorities must develop programmes to encourage small and medium-sized enterprises to undergo an energy audit and implement its recommendations.

(3) The competent authorities must make available to small and medium-sized enterprises, including through those associations or representatives of such enterprises as the competent authorities consider appropriate, examples of how energy management systems could be beneficial to their businesses.

Assessment of potential for high-efficiency cogeneration and efficient district heating and cooling

4.—(1) In this regulation—

“assessment” means a comprehensive assessment of the potential for the application of high-efficiency cogeneration and efficient district heating and cooling, carried out in accordance with and containing the information set out in Annex VIII to the Directive and which takes full account of the analysis of the national potentials for high-efficiency cogeneration carried out under Directive 2004/8/EC of the European Parliament and of the Council on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC(a);

“cogeneration” means the simultaneous generation in one process of thermal energy and electrical or mechanical energy;

“Commission” means the Commission of the European Union;

“cost benefit analysis” means an analysis capable of facilitating the identification of the most resource and cost efficient solutions to meeting heating and cooling needs of a geographical area, and which is based on climate conditions, economic feasibility and technical suitability in accordance with Part 1 of Annex IX to the Directive;

“efficient district heating and cooling” means a district heating or cooling system using at least 50% renewable energy, 50% waste heat, 75% cogenerated heat or 50% of a combination of such energy and heat;

“high-efficiency cogeneration” means cogeneration meeting the criteria laid down in Annex II of the Directive.

(2) Before 31st December 2015—

- (a) the Secretary of State must carry out an assessment in relation to England, Wales and Northern Ireland;
- (b) the Scottish Ministers must carry out an assessment in relation to Scotland.

(3) For the purpose of the assessments they are each required to produce under paragraph (2) (and for the purpose of any assessment updated under paragraph (6)), the Secretary of State and the Scottish Ministers must carry out a cost benefit analysis.

(4) Before or on 31st December 2015, the Secretary of State must notify the assessments carried out under paragraphs (2)(a) and (2)(b) to the Commission.

(5) If the Commission makes a request in accordance with the ultimate paragraph of Article 14(1) of the Directive—

- (a) the Secretary of State must update the assessment carried out under paragraph (2)(a) before the due date;

(a) OJ No L 52, 21.2.2004, p50; there are amendments but none are relevant to these Regulations.

- (b) the Scottish Ministers must update the assessment carried out under paragraph (2)(b) before the due date; and
- (c) the Secretary of State must notify the updated assessments to the Commission before or on the due date.

Amendments to the Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007

5.—(1) The Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007(a) are amended as follows.

(2) In regulation 2 (interpretation)—

- (a) in paragraph (1) for the definition of “the Cogeneration Directive” substitute ““the Energy Efficiency Directive” means Directive 2012/27/EU of the European Parliament and of the Council of 25th October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC(b), and any reference to Annexes II and X to the Directive is to be construed as a reference to those Annexes as amended from time to time”;
- (b) in paragraph (2) in the definition of “high-efficiency cogeneration” for “Annex III of the Cogeneration Directive” substitute “Annex II to the Energy Efficiency Directive”;
- (c) in paragraph (3) for “Cogeneration Directive” substitute “Energy Efficiency Directive”.

(3) In regulation 3 (issue of CHPGOs and designation of the competent authority) in paragraph (2) for “for the purposes of Article 5(2) of the Cogeneration Directive” substitute “to supervise the issuing of CHPGOs in accordance with Article 14(10) of and Annex X to the Energy Efficiency Directive”.

(4) In regulation 5 (issue and content of CHPGOs)—

- (a) after paragraph (2) insert—
 - “(2A) A CHPGO—
 - (a) shall be issued by reference to a standard size of 1 MWh; and
 - (b) shall relate to the net electricity output measured at the station boundary and exported to the grid.”;
- (b) in paragraph (3) for “matters set out in Schedule 2” substitute “information required by paragraph (b) of Annex X to the Energy Efficiency Directive”.

(5) In regulation 10 (recognition of CHPGOs)—

- (a) in paragraph (1) for “Article 5(5) of the Cogeneration Directive” substitute “Annex X to the Energy Efficiency Directive”;
- (b) in paragraph (3)—
 - (i) for “matters referred to in paragraphs 4 to 9 of Schedule 2” substitute “information referred to in paragraph (b) of Annex X to the Energy Efficiency Directive”; and
 - (ii) for “Article 5 of the Cogeneration Directive” substitute “Article 14(10) of the Energy Efficiency Directive”;
- (c) in paragraph (5) for “Article 5(6) of the Cogeneration Directive” substitute “Article 14(10) of the Energy Efficiency Directive”.

(6) In paragraph 7 of Schedule 1 (information to be supplied with a request for a CHPGO), for “Combined Heat and Power Quality Assurance Standard, Issue 1, November 2000, published by the Department for Environment Food and Rural Affairs” substitute “Combined Heat and Power Quality Assurance Standard, Issue 5, November 2013, published by the Department of Energy and Climate Change(c)”.

(a) S.I. 2007/292, amended by S.I. 2009/229.

(b) OJ No L 315, 14.11.2012, p1.

(c) Available from <http://chpqa.decc.gov.uk/chpqa-documents/>.

(7) Omit Schedule 2 (information to be contained in a CHPGO).

Assessment of energy efficiency potential of gas and electricity infrastructure

6. Before or on 30th June 2015 the Gas and Electricity Markets Authority must deliver to the Secretary of State—

- (a) an assessment of the energy efficiency potentials of the gas and electricity infrastructure of Great Britain in particular regarding transmission, distribution, load management and interoperability, and connection to energy generating installations, including access possibilities for micro energy generators;
- (b) a list identifying concrete measures and investments for the introduction of cost-effective energy efficiency improvements in the network infrastructure, with a timetable for their introduction.

Information and training on energy efficiency mechanisms and measures

7.—(1) In this regulation—

“building element” has the meaning given in Article 2(9) of Directive 2010/31/EU of the European Parliament and of the Council on the energy performance of buildings^(a);

“energy efficiency mechanisms” means the legal, administrative and financial schemes which exist and whose purpose is to promote or improve energy efficiency;

“financial institution” means an organisation regulated by the Financial Conduct Authority or the Prudential Regulation Authority;

“relevant market actor” means any person concerned with the promotion or improvement of energy efficiency, including consumers of energy, builders, architects, engineers, auditors and installers of building elements.

(2) The competent authorities must—

- (a) ensure that information on energy efficiency mechanisms is accessible and widely disseminated to relevant market actors;
- (b) encourage the provision of information to banks and other financial institutions on the opportunities to participate in the financing of energy efficiency measures, including through the creation of public-private partnerships;
- (c) promote, where appropriate in participation with stakeholders, local and regional authorities, the provision of suitable information, training and other awareness-raising initiatives to inform individuals of the benefits and practicalities of energy efficiency measures.

Duties of the competent authorities in relation to energy services and energy performance contracts

8.—(1) The competent authorities must—

- (a) publish clear and easily accessible information on—
 - (i) the types of contract for the provision of energy services which are available;
 - (ii) the clauses which should be included in contracts for the provision of energy services so as to guarantee energy savings and the protection of the final customer who is a party to such a contract;
 - (iii) financial instruments, incentives, grants and loans which may support the provision of energy services;
- (b) either—

(a) OJ No L 153, 18.6.2010, p13.

- (i) publish and regularly update a list of available qualified, certified or accredited energy service providers, together with details of such qualifications, certification or accreditation, or
- (ii) provide a publicly accessible forum on the internet where energy service providers can publish such information;
- (c) encourage the development of quality labels, including the development of quality labels by the trade associations to which energy service providers belong;
- (d) in relation to energy performance contracts to which a public authority may be a party—
 - (i) provide model contracts including at least the items listed in the Schedule, and
 - (ii) provide information on best practices for energy performance contracting including, if available, cost benefit analysis using a life-cycle approach.

(2) The competent authorities must clearly identify and publicise the point of contact where final customers can obtain the information provided in accordance with paragraph (1).

(3) In this regulation, “life-cycle approach” means, in relation to a cost-benefit analysis, an approach which takes into account the average frequency with which a building is renovated.

Duty for the Secretary of State to review the energy services market

9.—(1) In this regulation, “national energy efficiency action plan” means the written plan produced pursuant to regulation 5(b) of the Energy Efficiency (Building Renovation and Reporting) Regulations 2014^(a).

(2) The Secretary of State must publish a review of the current and future development of the energy services market in the framework of national energy efficiency action plan.

Evaluation and removal of barriers to energy efficiency

10.—(1) The competent authorities must evaluate barriers to energy efficiency, in particular—

- (a) in relation to buildings with more than one owner or with a tenant—
 - (i) any split of incentives which may exist between such persons whereby those who may not enjoy the full benefit of an energy efficiency improvement may be deterred from making investments in energy efficiency measures in relation to the building; or
 - (ii) any absence of binding criteria for dividing the costs and benefits of energy efficiency measures between such persons, including the absence of binding criteria regulating decision making processes in properties with more than one owner;
- (b) any public purchasing or budgeting and accounting rules in relation to public authorities which may act as a disincentive to—
 - (i) making investments over the long term in energy efficiency measures; or
 - (ii) entering energy performance contracts or other third party financing mechanisms on a long term contractual basis.

(2) Where it appears to the competent authorities that any such barriers as are referred to in paragraph (1) exist, then, where it appears necessary to do so, the competent authorities must take appropriate steps to remove them.

(3) The steps referred to in paragraph (2) may include—

- (a) providing incentives;
- (b) removing or amending legislation;
- (c) publishing guidance; or
- (d) simplifying administrative procedures.

(a) S.I. 2014/952.

(4) The steps referred to in paragraph (2) may be combined with the provision of—

- (a) education;
- (b) training;
- (c) information; and
- (d) technical assistance.

(5) Where it appears necessary to do so, the competent authorities must take appropriate steps to remove barriers that impede the uptake of—

- (a) energy performance contracting; or
- (b) other types of energy service by which energy efficiency measures may be identified and implemented.

Amendment of the Energy Efficiency (Eligible Buildings) Regulations 2013

11. Regulation 2 (Interpretation) of the Energy Efficiency (Eligible Buildings) Regulations 2013^(a) is amended as follows—

- (a) in the definition of “central government”, in paragraph (b) omit the words “of the competent authorities”;
- (b) in the definition of “energy audit”—
 - (i) in paragraph (a), insert “or installation” after “operation”;
 - (ii) in paragraph (b), for “saving” substitute “savings” and omit the word “and” where it last appears;
 - (iii) after paragraph (b), insert—

“(c) satisfies the minimum requirements specified in Annex VI of the Directive; and”;
- (c) after the definition of “energy audit”, insert—

““energy efficiency” means the ratio of output of performance, service, goods or energy, to input of energy;”;
- (d) for the definition of “energy efficiency improvements”, substitute—

““energy efficiency improvement” means an increase in energy efficiency as a result of technological, behavioural or economic changes;”;
- (e) before the definition of “energy efficiency plan”, insert—

““energy efficiency measure” means a measure which is designed to result in an energy efficiency improvement;”;
- (f) in the definition of “energy efficiency plan”—
 - (i) for “a more efficient use of energy”, substitute “an energy efficiency improvement”;
 - (ii) in paragraph (c), for “improvements” substitute “measures”;
- (g) in the definition of “energy management system”, for “that results in the more efficient use of energy” substitute “for the purpose of achieving an energy efficiency improvement”;
- (h) for the definition of “energy performance contracting”, substitute—

““energy performance contract” means a contract under which energy efficiency measures are—

 - (a) provided;
 - (b) verified and monitored during the whole term of the contract; and
 - (c) paid for by reference to a contractually agreed level of energy efficiency improvement or other agreed criterion such as financial savings,

(a) S.I. 2013/3220.

and “energy performance contracting” shall be construed accordingly;”;

- (i) before the definition of “energy service provider”, insert—
 - ““energy savings” means an amount of energy saved determined by measuring or estimating consumption before and after implementation of an energy efficiency measure, making appropriate adjustments to account for external conditions affecting energy consumption;
 - “energy service” means any benefit derived from a combination of energy with energy-efficient technology or action (including the operations, maintenance or control necessary to deliver that technology or action) which is delivered on the basis of a contract and which in normal circumstances is proven to result in energy efficiency improvements or energy savings which can be verified and measured or estimated;”;
- (j) for the definition “energy service provider”, substitute—
 - ““energy service provider” means a person who delivers energy services or energy efficiency measures in a final customer’s premises;”;
- (k) before the definition of “public bodies”, insert—
 - ““final customer” means a person who purchases energy for their own use;”.

Amendment of the Energy Efficiency (Building Renovation and Reporting) Regulations 2014

12. In regulation 4(b) (Annual reports and statistics) of the Energy Efficiency (Building Renovation and Reporting) Regulations 2014, after the word “Directive” where it last appears insert “as amended from time to time”.

Duty to review

13.—(1) The Secretary of State must from time to time—

- (a) carry out a review of the operation and effect of these Regulations;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how Articles 8(2), 14(1), 14(3) and 14(10), 15(2), 17(1) and 17(4), 18 and 19 of the Directive have been transposed in other Member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by these Regulations;
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate; and
- (d) where the objectives remain appropriate, assess the extent to which they could be more effectively achieved.

(4) The first report under this regulation must be published by 25th June 2019.

2nd June 2014

Gregory Barker
Minister of State
Department of Energy and Climate Change

SCHEDULE

Regulation 8(1)(d)(i)

Matters which must be included in model energy performance contracts for the provision of energy efficiency measures to public authorities

1. A clear and transparent list of the energy efficiency measures to be implemented or the energy savings to be obtained.
2. Guaranteed energy savings to be achieved by implementing the energy efficiency measures set out in the contract.
3. The terms, duration and milestones of the contract, including the period of notice for termination of the contract.
4. A clear and transparent list of the obligations of each contracting party.
5. Reference dates by which energy savings are to be established.
6. A clear and transparent list of steps to be performed to implement energy efficiency measures or package of such measures and, where relevant, associated costs.
7. An obligation for the energy service provider to fully implement the energy efficiency measures in the contract and for all changes made during the project to be documented.
8. A requirement for the inclusion of equivalent requirements in any subcontracting with third parties.
9. A clear and transparent display of the financial implications of the project and the proportion of the financial savings achieved which will be paid to the energy service provider.
10. Clear and transparent provisions relating to measurement and verification of the guaranteed energy savings to be achieved, including quality checks and guarantees.
11. Provisions clarifying the procedure by which changes affecting the content and outcome of the contract, such as changing energy prices or changes in the use intensity of an installation, will be dealt with.
12. Detailed information on the obligations of each of the contracting parties and the penalties for breach of those obligations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations transpose Articles 8(2), 14(1), (3) and (10), 15(2), 17(1), 17(4), 18 and 19 of, and Annexes II, VIII, IX and X to, Directive 2012/27/EU of the European Parliament and of the Council of 25th October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (“the Directive”) (OJ No L 315, 14.11.2012, p1).

Regulation 3 requires the competent authorities (defined in regulation 2) to develop programmes to encourage small and medium-sized enterprises to undergo energy audits. It also requires the competent authorities to make available to small and medium-sized enterprises examples of how energy management systems could be beneficial to their businesses. The document mentioned in regulation 3, BS EN ISO 50001:2011, can be obtained from the British Standards Institution at www.bsigroup.com and from the British Standards Institution customer services at 389 Chiswick High Road, London, W4 4AL, upon payment of a fee.

Regulation 4 imposes a duty on the Secretary of State to assess the potential for high-efficiency cogeneration of heat and electricity and efficient district heating and cooling in England, Wales and Northern Ireland, taking into account costs and benefits. It also requires the Scottish Ministers

to complete such an assessment in relation to Scotland. The Secretary of State is under a duty to notify both assessments to the European Commission by 31st December 2015. The Secretary of State and the Scottish Ministers must update the assessments in accordance with any request from the European Commission under Article 14 (1) of the Directive.

Regulation 5 amends the Guarantees of Origin of Electricity Produced from High-efficiency Cogeneration Regulations 2007 (“the Cogeneration Regulations”) (S.I. 2007/292). These amendments are necessary because the Directive repeals Directive 2004/8/EC of the European Parliament and of the Council on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC (“the Cogeneration Directive”) (OJ No L 52, 21.2.2004, p50). Article 14(10) and Annexes II and X of the Directive replace the requirements of Article 5 of the Cogeneration Directive which the Cogeneration Regulations transposed. Regulation 5 removes references to the Cogeneration Directive and replaces them with references to the relevant parts of the Directive. These concern the requirements for the issue of a guarantee of origin certifying that the electricity in respect of which the certificate is issued is electricity produced from high-efficiency cogeneration (electricity produced from cogeneration meaning electricity produced from combined heat and power).

The document mentioned in regulation 5(6), “Combined Heat and Power Quality Assurance Standard, Issue 5, November 2013, published by the Department of Energy and Climate Change”, may be obtained from the Heat Strategy and Policy Team, Department of Energy and Climate Change, 3 Whitehall Place, London, SW1A 2AW.

Regulation 6 imposes a duty on the Gas and Electricity Markets Authority (“the Authority”) to assess the electricity and gas infrastructure of England, Wales and Scotland with a view to identifying the potential for energy efficiencies. The Authority must make its assessment and suggested measures for improvement available to the Secretary of State by 30th June 2015.

Regulation 7 requires the competent authorities to ensure that information on schemes to promote energy efficiency is accessible and widely disseminated to relevant market actors. It requires the competent authorities to encourage the provision of information to banks and other financial institutions on the opportunities for financing energy efficiency measures. Regulation 6 also requires the competent authorities to promote the provision of information, training and awareness-raising initiatives to inform individuals of the benefits and practicalities of energy efficiency measures.

Regulation 8 introduces duties for the competent authorities to publish information relating to energy service contracts, energy service providers and energy performance contracts, including the provision of model energy performance contracts for the provision of energy efficiency measures to public authorities. Competent authorities must also encourage the development of quality labels.

Regulation 9 requires the Secretary of State to publish a review of the energy services market in the framework of the national energy efficiency action plan which is required by the Energy Efficiency (Building Renovation and Reporting) Regulations 2014 (S.I. 2014/952).

Regulation 10 requires the competent authorities to evaluate and where necessary remove barriers to energy efficiency. In particular, these may include barriers relating to properties owned by more than one person or where there is a tenant, and barriers relating to public purchasing or accounting rules. Appropriate steps must also be taken to remove barriers impeding the uptake of energy performance contracting or other types of energy services.

Regulation 11 amends the definitions of terms used in the Energy Efficiency (Eligible Buildings) Regulations 2013 (S.I. 2013/3220).

Regulation 12 amends regulation 4(b) of the Energy Efficiency (Building Renovation and Reporting) Regulations 2014 (S.I. 2014/952).

A full regulatory impact assessment has not been produced for these Regulations as no impact on the private or voluntary sectors is foreseen. A transposition note is annexed to the Explanatory Memorandum which is available alongside these Regulations on www.legislation.gov.uk.

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